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FEATURE

The Voluntary Party Liability Exemption – A Decade Of Success

Since the early 1990s, many states have created cleanup programs to assist businesses, developers and other interested parties in the voluntary investigation and remediation of contaminated properties.

In Wisconsin, state laws allow for the voluntary cleanup of these sites, provided DNR staff oversee the cleanup process and the party(ies) involved follow state standards.

In 1994, the Wisconsin State Legislature created the Voluntary Party Liability Exemption (VPLE), which allows parties to voluntarily conduct an investigation and cleanup to receive limits on their future liability. The VPLE language is part of the Spill Law and is found in section 292.15 of the Wisconsin statutes. It is administered by the DNR's Remediation and Redevelopment (RR)

Program and, as is the case with other program areas, there are fees associated with the VPLE process.

When the exemption was initially created, eligibility was limited, but under the current law the VPLE process is open to any party conducting the cleanup, including not only voluntary parties, but also past owners and operators who may be responsible parties.



Former DNR Secretary George Meyer presents the first Certificate of Completion to Cellular One Officials in 1995 (DNR photo).

THE VOLUNTARY PARTY LIABILITY EXEMPTION – A DECADE OF SUCCESS (CON'T.)

Protecting Against Future Liability – Certificates Of Completion

Once the DNR determines that the investigation and cleanup of a property – and any hazardous substances that have migrated off the property – has been completed, the agency will issue a Certificate of Completion (COC). The COC exempts the voluntary party from future liability under most provisions of the Spill Law.

The certificate assures the party that the DNR will require no additional environmental work with respect to the pre-existing contamination, even if in the future:

- environmental standards change;
- the cleanup action fails; or
- the hazardous substance contamination that was the subject of the cleanup is discovered to be more extensive than originally thought.

While parties following the VPLE process follow the same procedures used in standard cleanups and closures of contaminated properties, they also get the added comfort of a COC. The liability protection also applies to future owner(s) of the property, provided the owner(s) continues any required maintenance and monitoring of the property.

The very first COC was issued in 1995 for the Cellular One building in New Berlin. Since that time, 51 properties have received a Certificate of Completion, and 126 parties across Wisconsin are currently in the VPLE process.

“The voluntary party exemption has not only provided a level of comfort for developers and other parties, it has also helped facilitate real estate transactions involving contaminated properties,” said Michael Prager, the RR Program’s Land Recycling Team leader. “Prospective purchasers feel certain that the entire property has been investigated and cleaned up to the satisfaction of the DNR.”



Washington Square Mall in 2001, after redevelopment was completed and the site received a VPLE Certificate of Completion (photo courtesy of General Capital).

Small City VPLE Success – Germantown Mall

One site that benefited from the VPLE was the Washington Square Mall, located just outside Milwaukee in the village of Germantown. Historically, the property served as a strip mall with a drycleaner, but had been underutilized for many years. Due to soil and groundwater contamination and other issues, redevelopment interest in the site was limited.

Through a partnership with village officials, DNR staff and an interested developer, the site was entered into the VPLE process. Significant cleanup activities occurred at the site, including removing the contaminated soil, and using an injection remedy and natural attenuation for the groundwater contamination.

This was also one of the first sites in the state to obtain environmental insurance through a new program that allows a property owner to obtain the liability exemption before groundwater standards have been met. Today the site hosts a Kohl’s grocery store and several smaller businesses.

Milwaukee-West Milwaukee Site Highlights Large-Scale VPLE Properties

Another area that benefited from a VPLE Certificate is the Babcock and Wilcox/Inryco site, located on the border between the cities of Milwaukee and West Milwaukee. Babcock & Wilcox operated a steel tubing plant until 1982 on one property, and Inryco, Inc., occupied a metal fabrication plant on the adjacent property until 1986. Despite some cleanup and redevelopment efforts in the 1980s and early ‘90s, both properties sat vacant and tax delinquent for a number of years.

THE VOLUNTARY PARTY LIABILITY EXEMPTION – A DECADE OF SUCCESS (CON'T.)

Throughout the life of this brownfield, DNR staff found various contaminants at the properties, including polychlorinated biphenyls (PCBs), trichloroethylene (TCE), chromium and lead. Lead, chromium and PCB removals were conducted, the TCE groundwater contamination was remediated and soil and groundwater contaminants were remediated in an underground storage tank area.

Both properties received VPLE Certificates of Completion from the DNR. Thanks to those assurances, local developers and businesses became interested in the property. In the late 1990s, Donald Kubenik, a local developer who grew up across the street from the site, remodeled a building on the property and moved his mechanical contracting business and 45 employees to the site.



The Milwaukee Journal-Sentinel facility, prior to completion (DNR photo).

In 1999, the Milwaukee Journal-Sentinel, Inc., purchased 41 acres from Mr. Kubenik and built a \$106 million production plant that employs close to 400 people, adding \$20 million of increased property tax base to the community.

Other businesses now located on the property include a domestic animal control shelter for stray animals, a computer company, a pharmaceutical company and a sign company.

For More Information

Please contact Michael Prager at 608-261-4927, or michael.prager@dnr.state.wi.us, for more information. Fact Sheet #2, *Voluntary Party Remediation And Exemption From Liability* (publication #RR-506), also provides detailed information on the VPLE process, a chart on the differences between VPLE and traditional cleanups, and a helpful "Question and Answer" section. It can be accessed via the following web link: <http://www.dnr.wi.gov/org/aw/rr/archives/pubs/RR506.pdf>.

Other related web links:

- **VPLE web page:** http://www.dnr.wi.gov/org/aw/rr/liability/purchasers_0.html ; and
- **VPLE insurance:** http://www.dnr.state.wi.us/org/aw/rr/liability/purchasers_0.html#vple; you can also access our VPLE Insurance publication, Fact Sheet #13, entitled *Insurance for Voluntary Party Liability Exemption Sites Using Natural Attenuation: Information and Fee Schedule* (publication #RR-661), at the following link: <http://www.dnr.state.wi.us/org/aw/rr/archives/pubs/RR661.pdf>.

Consultants List Update



It's time once again for consultants to review and update their information on the RR Program's *Environmental Services Providers List* (publication #RR-024).

This listing is intended to help responsible parties locate consultants that do environmental investigation and cleanup in different parts of Wisconsin. However, the document is not an endorsement or certification of those consultants on the list. Publication RR-024 is available on the program web site at: <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR024.pdf>.

To update their information, consultants should contact Megan Clemens by July 15, 2005, at megan.clemens@dnr.state.wi.us.

Common Problems – And Helpful Hints – Regarding Case Closures



Ever wonder why it some times takes RR staff so long to review case closure requests?

While the RR Program prides itself on quick turnarounds for customer reviews for their contaminated properties, in many instances the length of time it takes to approve a case closure request has little to do with such staff issues as workloads or backlogs.

Often delays relate to problems with the materials submitted with the case closure quest. Many times these issues arise when a consulting firm is working at a contaminated site that was previously handled by another firm.

Recent requests received by the program's regional hydrogeologists illustrate some all-too-common issues they encounter. The list below reviews these examples and also provides helpful ways to correct them, hopefully saving our customers valuable time and money.

- **Confusing, incomplete and/or illegible maps** – maps are not useful if the reviewer can't read them due to tiny or fuzzy text. There should be at least one site map with all boring and well locations, contaminant sources and excavations shown. Staff also need to make sure that the same map clearly shows property boundaries, utilities, and public, municipal and/or industrial water supply well locations.
- **Poor reproduction of old data tables** – closure requests sometimes include the original consultant's data tables, which are fine when they are legible and accurate. However, problems arise from incomplete tables and poor copies. Please make sure your data tables are complete, legible and pertinent to the closure request.
- **Multiple formats in data tables** – some closure requests include both new data tables from the current consultant as well as older data tables, with information spread throughout the report in tables with different formats. When this situation occurs, it can be difficult to determine which are saturated soil samples, which contaminated soils have been removed through excavation, and whether groundwater samples pre-date or post-date active remediation. For efficient review, all maps need to be legible, and soil and groundwater data tables need to be comprehensive, consistently formatted and accurate. Groundwater summary tables should include consecutive sampling results at each well and should clearly note the correct units. Values for compounds not detected should be expressed as actual detection limits, as opposed to "No Detect" (ND).
- **Duplicate titles** – if the initial consultant labeled tables – for example, "Table 1 and Table 2" – and the second consultant added new data tables also labeled as "Table 1 and Table 2," the closure review may be delayed while the hydrogeologist sorts out which tables refer to what text. Also, sometimes we receive different figures (e.g. maps, cross-sections) with identical labels. Please make sure all tables and figures have distinct and understandable titles.
- **The little stuff adds up** – inaccurate deeds, missing signatures, missing figures and tables, text that conflicts with data tables, and other problems all may contribute to more review time and additional costs. Please make sure your submissions are as complete, accurate and legible as possible.

To help with your closure requests, the RR Program fact sheet entitled *Contents of Site Investigation Reports for Petroleum Contaminated Sites* (publication #RR-628) provides a standard format for data tables and maps, and can be adapted for use at non-petroleum sites. It's available on our web site at: <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR628.pdf>.

When in doubt regarding the additional time and expense it may take to consolidate data, especially when working within an approved bid, please contact the RR Program project manager to discuss the format of your data. Thank you for your cooperation in helping us work more efficiently!



SUCCESS STORIES

Flooding, Dam Break Leads To Community Partnerships, New Trout Habitat

Along the northern Minnesota-Wisconsin border sits the village of Osceola, a small community hugging the St. Croix River shoreline just before it angles west, nearly catching the edge of the Twin Cities suburbs. Living in a rural place such as Osceola, residents are used to a certain level of tranquility. In 2002, the village was enjoying just such a moment – a quiet end to its summer – when a Labor Day weekend rainstorm caused Osceola Creek to flood.



The Osceola Creek during the construction phase (DNR photo).

After the rain on September 2, the swollen Osceola Creek caused one of three dams in the area to fail. Contaminated sediments – which came from historical deposition transported down to the dam – flowed rapidly downstream, and were deposited in residential areas as well as in the Mill Pond and Grist Mill parks. Some sediment also began to flow into the St. Croix River. The deposits were 2-3 inches thick in the park, and in some areas along the creek banks sediments were up to 8 inches thick.

Village officials initially worked with the Federal Emergency Management Association (FEMA) to remove the sediments from the park, and contamination was discovered through sampling that was part of FEMA's dam cleanup efforts. The sediments contained arsenic, lead, and chromium above state levels established to protect human health.

The flood and associated dam failure also resulted in the creek seeking a new channel, and significant volumes of soft sediment and floodplain soil were displaced and carried into the St. Croix River. Officials with the U.S. Park Service raised concerns over the impact of the sediments on habitat for the Winged Maple Leaf Clam, an endangered species that resides in the riverbed of the St. Croix. Prompt action was necessary to minimize the impact on the clam population.

Staff with the DNR's Remediation and Redevelopment (RR) and Water programs worked with village officials and the owner of the dam to decide the best course of action. Sediment samples were collected and analyzed above and below the former dam, and test results revealed limited contamination in the remaining sediments.

While restoration of the dam was determined to be infeasible, members of the community began discussions about removal of the dam to improve trout habitat. The continued release of sediments associated with the new stream channel, and stream bank erosion into Osceola Creek and eventually to the St. Croix River, continued to pose a threat to the clam population.

Thanks to \$55,000 from the state's Environmental Fund, which the RR Program uses in emergency situations, efforts were undertaken to stabilize the banks, grade the creek bed to a proper slope and add riprap. Finally, the Polk County Land and Water Resources Department, along with volunteer assistance and funding from the U.S. Fish and Wildlife Service, added fabric logs, wood-fiber meshing and seeding.



Completed rip-rap and other stream improvements were completed through a public-private partnership led by the Village of Osceola (DNR photo).

The DNR Lands Program has also acquired the property and will be removing remaining dam structure this year. Finally, DNR Fisheries Program staff are developing plans for additional stream and trout improvement projects.

Due to the efforts of all involved, a successful sediment cleanup project has now turned into an ongoing effort to protect endangered species and revitalize the creek through stream and trout enhancement projects. The partners long-term plans call for turning the property over to the village of Osceola for a park and greenway.

Insiders Look at the Web – Big Changes to *BRRTS on the Web*

You may have noticed a major update to our on-line database of contaminated sites, known as *BRRTS on the Web*. The BRRTS acronym stands for “Bureau For Remediation and Redevelopment Tracking System.”

The improvements program staff have made to this system will make it easier for our customers to find information on contaminated properties, including:

- an improved search engine;
- a link directly to the Program’s GIS Registry of Closed Remediation Sites;
- identification of the current status for any site activity;
- a way for customers to view all activities at a single location;
- a new pop-up feature that provides definitions and helpful explanations for several tools;
- search accuracy “indicators,” to inform users how often and how consistently DNR staff entered certain pieces of information into the database; and
- a new “fuzzy” way of searching to help you find activities even when you’re not sure of the exact name or address; by simply typing in a word that you expect to be included – such as “Jones” or “Main” – the search engine will do the rest.

What’s Ahead?

The upgrade to *BRRTS on the Web* occurred in two steps – in April the program announced improved basic search functions, and in May unveiled a new “Advanced Search” feature. The Advanced Search function will allow users to dig deeper for more information and provide even more ways to find important data on a contaminated property.

Finally, Program staff are busy working on the next on-line improvements – including an interactive map that displays active and closed sites. Stay tuned!

Ready to Check Out the New BRRTS? Here’s the web link:

<http://botw.dnr.state.wi.us/botw/Welcome.do>



Wisconsin Waterfront Redevelopment Conference Web Cast, Presentations Available

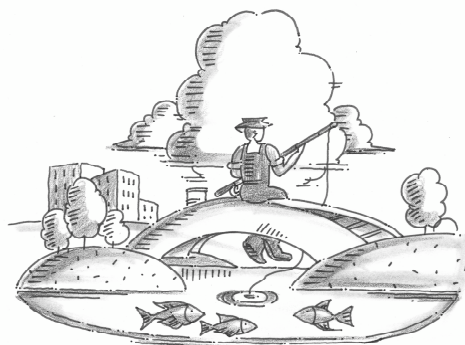
In April, more than 190 people came together for the Wisconsin Waterfront Revitalization Conference at the Blue Harbor Resort in Sheboygan. The event – sponsored by the Wisconsin DNR, the Great Lakes Commission (GLC) and a host of other state agencies, non-profit organizations and other groups – provided helpful resources on waterfront revitalization for local government officials, developers, planners and other interested parties.

A web broadcast of the panel sessions, along with copies of the presentations and other conference information, is now available on the GLC’s web site at: <http://www.glc.org/wiconference/>.

The Blue Harbor Resort was chosen because of its location on Lake Michigan’s coast and its brownfield history as the former C. Reiss Coal facility.

Based on the success of this conference, future conferences may be held; in addition, a multi-agency, multi-government web site is being planned and will serve as a “One-Stop Shop” for key communities and parties undertaking waterfront revitalization.

For more information about the conference and waterfront revitalization in Wisconsin, please contact Andrew Savagian, RR Program outreach specialist, at andrew.savagian@dnr.state.wi.us, or 608-261-6422.

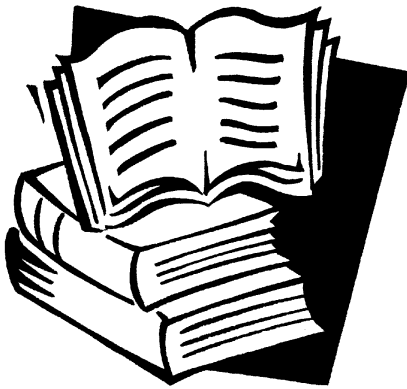


Brownfields 2005 Conference Set For Denver November 2-4

EPA will host Brownfields 2005, the 10th Annual Brownfields Conference, from November 2-4 in Denver, Colorado. This annual free conference features interactive discussions, educational presentations, mobile workshops and plenty of networking opportunities with business, government, and nonprofit organizations working at the enterprising edge of brownfields redevelopment. Please visit the Brownfields 2005 web site at <http://www.brownfields2005.org/en/index.aspx> for more information.



New, Revised Publications



VPLE Insurance Fact Sheet Updated

The RR Program's fact sheet *Insurance for Voluntary Party Liability Exemption (VPLE) Sites Using Natural Attenuation* (publication #RR-661) has been revised. The updated fact sheet includes information about new VPLE insurance fees, which have increased approximately 5 percent, marking the first time fees have been raised since the program began. The fact sheet can be accessed via the following web link: <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR661.pdf>.

GIS, Off-site Publications Revised

The Program has also made revisions to *Guidance for Electronic Submittals for GIS Registry of Closed Remediation Sites* (publication #RR-690) and the *Off-site Liability Exemption and Liability Clarification Application Form* (form #4400-201).

The two documents are available at the following web links: RR-690 – <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR690.pdf>; Form 4400-201 – <http://dnr.wi.gov/org/aw/rr/archives/pubs/4400-201.pdf>.

Northeast Regional Office Has Moved!

The DNR's Northeast Regional Office has moved to a new location. The new contact information:

Wisconsin DNR
2984 Shawano Avenue
P.O. Box 10448
Green Bay 54307-0448
RR Program Fax: 920-662-5197
(Shawano Avenue zip code: 54313)

New phone numbers for RR Program staff are available on the RR web site at the following link: http://dnr.wi.gov/org/aw/rr/technical/lists/ner_move.pdf.

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For More Information: *Re News* is published quarterly by the Wisconsin Department of Natural Resources Bureau for Remediation and Redevelopment.

This newsletter is available in alternate format upon request. Please call 608-267-3543.

Our Web Site Is : <http://www.dnr.wi.gov/org/aw/rr>

Refer comments and questions to :

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This newsletter may contain summary information about certain state statutes and/or rules and does not include all of the details found in the statutes/rules. Readers should consult the actual language of the statutes/rules to answer specific questions.

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